DOCUMENT RESUME

ED 135 198 EC 093 174

AUTHOR	Rouin, Carole
TITLE	The Media As an Instructional Aid with the Deaf-Blind. Proceedings.
INSTITUTION	California State Dept. of Education, Sacramento.; Southwestern Region Deaf-Blind Center, Sacramento, Calif.
SPONS AGENCY	Bureau of Education for the Handicapped (DHEW/OE), Washington, D.C. Centers and Services for Deaf-Blind Children.
PUB DATE	76
NOTE	30p.; Proceedings of a national workshop (December 10-12, 1975)
EDRS PRICE	MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS	Conference Reports; *Copyrights; *Deaf Blind; Elementary Secondary Education; *Instructional Media; Multiply Handicapped; Severely Handicapped; Workshops

ABSTRACT

Presented are the proceedings of a national workshop, titled "Media as an Instructional Aid with the Deaf-Blind", designed to introduce new ideas, techniques, and approaches to media production methods for the deaf-blind and to examine copyright laws as they pertain to reproduction of materials for educational use. Entries by media personnel currently involved in producing materials for deaf-blind educational programs include the following titles: "To Tinker or Not to Tinker" (a discussion on whether or not to use videotape) by P. Utz, "Audio Reproductions in Media" by B. Fletcher, "Documentary Production" by D. Barclay, "Video Production in Media" by T. Smith and H. Story, "How to Conduct a Workshop in Preparing 'Hands-On' Materials for Deaf-Blind Children" by M. Tarling, "Copyright Law and How It Pertains to and Affects Media in Education" by G. Fuhrig, and "Copyright Permission--A Guide for Noncommercial Use from the Association of American Publishers". (SBH)

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Proceedings

The Media as an Instructional Aid with the Deaf-Blind

Prepared by Carole Rouin, under the direction of

William Blea, Project Director, Southwestern Region Deaf-Blind Center, California State Department of Education; and

Robert Dantona, National Coordinator, Centers and Services for Deaf-Blind Children, Bureau of Education for the Handicapped, U.S. Office of Education

EC093174

This publication, which was funded under the provisions of Public Law 91-230, Title VI, Education of the Handicapped Act, Part C, Section 622, was published by the California State Department of Education, 721 Capitol Mall, Sacramento, CA 95814. The activity which is the subject of this publication was supported in whole or in part by the U.S. Office of Education, Department of Health, Education, and Welfare. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Office of Education, and no official endorsement by the U.S. Office of Education should be inferred.

Printed by the Office of State Printing
and distributed under the provisions of the
Library Distribution Act

1976

Preface

Media as an instructional aid with the deaf-blind is a highly technical, complex, and newly developing area of service to deaf-blind children to which the Southwestern Region Deaf-Blind Center wishes to give full support.

The topics presented in these proceedings offer a comprehensive and stimulating survey of the field, including not only the modes of instructional aid but the legal ramifications for their use.

While participants at the conference benefitted from "hands-on" participatory training exercises which cannot be reproduced in a printed document, I am sure the presentations contained in these conference proceedings will be a valuable reference for anyone working with deaf-blind children.

WILLIAM A. BLEA
Project Director,
Southwestern Region Deaf-Blind Center

Introduction

Richard Johnston
Media Specialist

On December 10–12, 1975, the Southwestern Region Deaf-Blind Center, under the direction of William A. Blea, project director, sponsored a national workshop on "Media as an Instructional Aid with the Deaf-Blind." The intent of this workshop was to introduce new ideas, techniques, and approaches to media production methods for the deaf-blind and to examine copyright laws as they pertain to reproduction of materials for educational use.

Workshop participants were media personnel currently involved in producing materials for use in educational programs for the deaf-blind. Although the backgrounds of the participants varied, their common interest in deaf-blind programs and media set an informal atmosphere that encouraged the exchange of ideas between speakers and participants.

All of the participants had useful information to share, and a lively question-and-answer period followed each presentation. Interest in the subject of media for the deaf-blind was so intense and there was so much information and knowledge to share that the workshop continued into unscheduled evening sessions to permit examination of equipment and viewing of videotapes prepared by the participants.

Participants left the workshop not only with answers to previous questions and lists of media materials available from various regional centers but with a feeling of accomplishment. They also left with new methods and techniques to try and new questions to find answers for.

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To Tinker or Not to Tinker

Presented by Peter Utz
Television Coordinator, Kingsborough Community College, Brooklyn, New York

Ever since the invention of the crutch, man has been trying to compensate for his deficiencies. The same is true for the field of education. If we cannot make a point through speech alone, we use media. The sights and sounds of an audiovisual presentation help us to remember the content of a presentation. As Socrates said, "Knowledge keeps no better than fish"; so we use media as a crutch to keep knowledge fresh.

Since most of you are media people, I doubt that what you need is a pep talk on the strong points in your field. So I thought it might be good to suggest some disadvantages of media. Perhaps we are so sold on audiovisuals that some consideration of the weaknesses of audiovisuals will give us perspective.

My field is instructional television. I considered using my staff and my $80,000 television studio to make a hard-hitting, fascinating videotape for you. While I was trying to conjure up graphics and gimmicks and props, I happened to notice a sign on somebody's office wall that said, "If you can't dazzle them with your brilliance, then buffalo them with your bull." I realized that what I was trying to do was to impress you with my production. I had not given first priority to what the content of that production would be. Have you ever tried to dazzle someone with your media?

As you know, any finished product is the result of detailed preparation. It was Michaelangelo who said, "Trifles make perfection and perfection is no trifle." Look at all the trifles we have to deal with. We have graphics and lighting, photography and sound, editing, and electronic problems. The deeper one gets into a production, the less one remembers the reason he started it. Thomas Edison must have had this in mind when he placed a sign over his workbench that said, "There is no expedient to which man will not resort to avoid the real labor of thinking."

Have you ever used media as an expedient, busying yourself with the details instead of laboring with the main objectives? Question yourself, is media the best way to convey the message? Is the message worth the money and time you are spending on it? Those are the big questions, the ones you should labor with.

Have you ever watched someone's lovely presentation and asked yourself: How can so little thought be put into so many words and pictures? Was the purpose of the presentation obscured by the presentation? If these thoughts come to mind, what you are viewing is the menace of media, the results of someone getting carried away with razzle-dazzle. Oh, but you say, razzle-dazzle is important, it is necessary; it clarifies things and fixes them in your mind. You say a picture is worth a thousand words. I will respond to that by loosely quoting Ray Wyman of the Northeast Regional Media Center for the Deaf who says, "Give me a thousand words and I will give you Lincoln's Gettysburg Address, the Lord's Prayer, the Preamble of the Constitution, the Ten Commandments, Newton's Law of Physics, Julia Child's recipe for Cordon Bleu, the Bill of Rights, the formula for DNA, your wedding vows, and still have enough words left over for a Shakespearean sonnet." Show me a picture conveying the essence of all those words. My point is that good thinking is more valuable than great media. Do not let yourself slip into the habit of sacrificing the thought for the media. Do not let the media dictate the message.

Another excuse for not providing a videotape presentation is play-back problems. A good speaker presenting a videotape would probably do the following things: He would make several long distance telephone calls, arranging for equipment and checking compatibility. He would bring two copies of the videotape with him to make sure that he has an extra copy for safety's sake. He would, on arrival, inspect all of the equipment to make sure it was what he thought it was, not trusting the media people in charge, regardless of how competent they are. He would try out the tape on their tape player and he would insist that there be two tape players and two monitors, essentially two complete set-ups, so he would have a backup, especially if he were presenting his videotape to a group of media people. He would again personally

check out both systems after they were set up in the conference room. He would check cables, electrical outlets, locate power switches for those outlets, fine tune and adjust the monitors, and check the lighting. And things still go wrong. A friend of mine set up a lovely-looking video presentation. He spent a lot of time. He checked the equipment over five times; he had everything perfect. The audience came in and sat down. As he started the presentation, they started turning off the lights. Each time they turned off a light, one of the machines stopped working. They turned off one light and the record player stopped. They turned off another and the projector stopped. Then the videotape stopped. He had not checked to see if the light switches were connected to the power outlets. That is something you learn from experience. You have to find out who is using the conference room before you and make sure you have access to the equipment right before you go on, then you make your final check and make sure that everything is working and then still have something prepared to say that will last about a minute in case your equipment fails and you have to fiddle with it. You need to be able to talk while you are working with your equipment. Then, if your tape was well made and you have taken these playback precautions, your presentation should come out all right.

If, however, you choose not to show a videotape, you can spend your conference time meeting people rather than chasing cables. You can discuss new ideas with the participants rather than discussing machine compatibility and equipment operation. You can spend your time relaxing and absorbing the activities that are going on around you rather than being preoccupied with the delivery of the equipment and its placement and redundant system check-outs. My best excuse for not bringing a videotape is that I have a chance to meet people and talk about ideas instead of playing with equipment and cables.

If you agree that headaches come along with technology, perhaps you will also agree that equipment sometimes occupies us with so many details that we forget our objectives. Perhaps you will half agree with me that audiovisual tempts us to razzle-dazzle a little bit more than we should. If I can half convince you of these things, then I have come a long way. You and I are a very special group of people, a group that I would affectionately call "tinkerers."

As media people, we do not fear machines; we are willing to tinker with something until we get it working right. We don't mind reading instructions and learning long laborious operational procedures on equipment. We are willing to fuss with the picture and with the sound to make it perfect. We trouble-shoot equipment problems no matter how long it takes. We are willing to ponder over software selection. But what about the teacher in a classroom of anxious children? What about the media paraprofessional or the generalist who is not mechanically minded? Are these people expected to tinker and fuss and check and experiment and recheck the way we do? If you half agree with my argument, maybe you can understand how these people might totally agree with those arguments to the point of not wanting to use media. Perhaps these people are justified in not wanting to use media.

Consider the thankless hassle of looking through catalogs; selecting a film for preview; ordering the film for preview; previewing the film; sending it back; then ordering it for the class three months later; making out all the purchase or rental forms; checking the film in; reserving the projector, the screen, the extension cord, the extra bulbs, the take-up reel; and then acquiring and setting up that projector, the screen, the extension cord, and anything else that you need to show the film. Then you tinker with the equipment until it works right, baby-sit the equipment while it is working and when you are finished, return it. That is a thankless hassle. Does anyone say, "Gee, that was nice of you to go through all those things?" Nobody ever says that.

Many people are willing to wade through the paperwork, and the media department often helps you do this. The media department may also help set up the equipment, but the scary part for the nontinkerers—mechanically timid persons—is the operation of the device. Overhead projectors and filmstrip projectors usually work all right. But how about a movie projector or an audiotape recorder? When have you ever been able to place a tape on a videotape player with a monitor and turn it on and have it play right the first time without adjusting anything? The more sophisticated the equipment, the more likely it is to require attention. The more attention it requires, the more it needs the tinkering type of operator. Herein lies the objective of my speech. All media is not for everybody. The complexity of the medium should match the tinkering ability of the user.

You are probably saying to yourself that television is not that hard. Anybody can aim a camera. I have seen it happen at video expositions, demon-

strations, workshops, and conferences. But the booth operator or presenter never tells you how much time he spent setting up that equipment and getting all the bugs out so that it would look easy. Have you ever tried to sell your faculty on some aspect of media, meticulously preparing everything so that it would look easy? Did you tinker with it in the back room, displaying it only after it was perfect in every detail? If so, perhaps you were being a salesman, not an adviser; perhaps you were doing someone a disservice.

Let me give you an example of equipment versus the user in the field of deaf instruction. In 1968, Raymond Wyman of the Northeast Regional Media Center for the Deaf developed a system called Mediated Interaction Visual Response System (MIVR). In this system an overhead projector was placed on the desk of each of the eight students in the class and screens were placed behind them. The teacher would ask a question and the students would write the answer on the overhead projector. By being able to see the answers written out, the teacher could correct the problem the moment that it occurred, instead of waiting as one must in a regular classroom in which one person raises his hand and answers the question while all the rest of the students are quiet. With MIVR, everybody has to answer every question, so you get constant work out of the students. All of them have to stay awake and respond constantly. You get constant feedback, constant reinforcement, and constant correction of errors. Positive reinforcement is going on all the time. Educationally and psychologically, that is sound thinking. MIVR is a system that works well.

We went a step farther. We adapted MIVR to television cameras (MITVR) over each student's desk. The teacher had a bank of monitors before her so she could monitor each student's entire performance and could push a button to present one camera view on a large monitor in front of the classroom for all the students to see. The equipment was fairly reliable, but the main user of this system was a teacher who adapted well to technology. She adjusted to the MITVR equipment immediately. If something went wrong, she quickly found a way to circumvent the problem. This teacher adjusted to the mechanical aspects of MITVR and creatively invented new uses for the tool.

The second teacher who used this system found the equipment confining. This teacher could not absorb eight television monitors at once. She also had problems concentrating on the lesson while she was trying to look at the monitors and look for students' mistakes to correct. She couldn't handle all of these things at once. Many people cannot operate a piece of equipment and handle something else at the same time. The second teacher was awed by the wires and support and cameras and monitors. She disliked the depersonalization which occurred when there was a piece of equipment between her and the class. She disliked the cameras and the myopic view of what the students were doing. In general, she used a minimal amount of the equipment's full potential. This several-thousand-dollar system was wasted on the second teacher.

When a student happened to bump his head against the camera lens, putting it slightly out of focus, this second teacher was devastated. She did not know what to do. You and I would know that if a camera is out of focus, you go to the lens, give it a twist, and things go back into focus. But we have a special kind of common sense, because we have dealt with these pieces of equipment before. Even if you had never seen a particular piece of equipment before in your life, you know there is something you can do with the lens that will make it go into focus. But this is not a piece of common sense shared with everyone. Thousands of little things can go wrong with a piece of equipment that you and I would catch right away. This knowledge is not shared by everyone.

For example, a teacher who had been playing a movie for 10 or 20 minutes called me and said, "The picture won't stand still and I can't get any sound. Can you come and take a look?" I found that the film had been turned around and the sprocket holes were on the wrong side. As I turned the film around, I thought to myself that the teacher should have known that. You can see the sprocket holes and should know that they line up with the sprockets, but that is something that a mechanically minded person would pick up. A person who has worked with equipment before would think of it, but people who do not work with equipment a lot will forget it, even if you tell them, show them, and put them through a course.

Another example is a person who is too mechanically minded. One teacher who called for help said she had spent half an hour trying to thread the projector. She had it threaded, but it didn't work exactly right. I found that she had it threaded under one wheel, over another one, down through the film gate, over some more wheels, under some other wheels, down through the sound room, over and under some more wheels, and up onto the take-up reel. The problem was that it was an

automatic load projector. All she had to do was put the film into the top slot and it threaded itself.

Now, I am a tinkerer. I am not afraid to twiddle and adjust and take things apart. My first television studio was mostly Sony equipment, about $6,000 worth. We had 15 pieces of equipment on which were 40 knobs. We spent most of our time preparing good lessons and were able to produce about five videotapes a week. We made it do more than it was designed to do. We got about 120 percent of the potential out of that equipment. Our administration liked what we were doing so much that they insisted we have a professional studio worth $80,000. We now have 91 devices in our professional studio with 588 knobs to twidde. On the average, one knob comes loose and one connection has to be resoldered every day. I work just as hard as I did before, but now instead of doing creative instruction, I spend most of my time maintaining, repairing, and trying to control my monster. We succeed in producing about one pretty good tape a week.

I should not berate our studio. It can do things that our other studio could not do. It is just that I have to tinker with it too much for my liking. Until the budget crisis came to New York City, our administration had planned to upgrade us to a half-million dollar color television studio, all of which was to be operated by myself, my assistant with a liberal arts AA degree, and some student aides. Repair work on this equipment was going to be done by the media technician over in the audiovisual department. That is like having a 747 with a pilot and a stewardess and an automobile mechanic who comes in once a week to keep the thing flying. Television is a powerful tool. It is an investment which requires adequate and proper support. It is easy to step beyond the tinker-and-twiddle stage to the I-cannot-even-make-it-work stage.

If you think that you are suffering with your simple shoestring operation, remember, it is not what equipment you have that counts; it is what you do with it. Great things can be done in simple television studios. They spring free from your mind and do not require equipment that bogs you down. The hidden advantage of a simple shoestring operation is that it suppresses our natural inclination to overdo things. Advancing into more sophisticated equipment is not necessarily progress. For example, consider the black-faced digital watch. You push the button once and it gives you the time. You push the button twice and it gives you the date. All this for $388. My cheap, simple calendar watch with hands will tell me the date and time just by looking at it. So where's the progress?

In short, equipment must be reconciled with the proposed application and with the tinkering ability of the user. When the process becomes too complicated, the media hurt rather than help us. When the time comes to select a new device and you are deciding to buy or not to buy, give some thought to this. To tinker or not to tinker, that is the question. The choice is yours.

Audio Reproductions in Media

Presented by Bill Fletcher
Owner-Operator, Commercial Recording Studio, Los Angeles, California

Sound is a form of communication which is underplayed. We approach education visually, and we think of sound as backup or support for what we see. Yet sound is a total communication of its own.

Sound can be divided into three areas: words, feelings, and touch. Sound comes through the *words* I say to you and the *words* we say to each other. This is the intellectual approach. The second, more powerful approach is the *feeling* that sound carries. Feeling is the *way* that I say things to you; music is almost total feeling. The third area goes beyond the realm of hearing, but is still sound. That area is vibration and touch. The sense of touch is an important factor in sound communication, especially to deaf-blind children.

When communicating with people, you have to keep them interested. If people are not interested, you are not going to communicate. A ten-minute program may seem short, but it is a long time to keep people interested. We need entertainment as well as a message. The entertainment will hold the interest so that the message will be retained.

Many people have good ideas for programs but they do not know how to put them together, they do not know how to produce the program. I would like to describe a few techniques so that if you have a program you want to produce, you can.

The first technique is that of editing. If you can edit, you can put a program together by using simple transfer techniques. Editing also allows you to control the pace of the program. Pace should change throughout a presentation to keep the audience involved. You can change the pace by editing your narration. You can physically alter the space between words on a tape to make people sound more intelligent or to take speech problems away. One change technique that is used to change pace—one that is used constantly and that many people do not notice—involves music. Throughout a presentation music is edited to make a particular piece of music run as long as it is needed.

Music helps to establish an appropriate frame of mind so you can receive the information. Each musical section has a theme or keynote and complements certain visual presentations. For example, traveling music complements a film showing the countryside. If you understand that sound is not only an intellectual communicator, but also a feeling communicator, you will use music that is appropriate to your presentation, and music will add to your message, rather than distract from it.

Another method of controlling pace is to vary the speakers in a program. I try to use at least three different speakers in a ten-minute program. Using more than one speaker gives the ear something new to listen to and marks changes in content. A voice change should be programmed after at least every two paragraphs of narrative. You want to keep the listener involved, and this means you have to keep him listening.

Recording level is also important. The proper meter level is "0." Some meters have color markings instead of numbers. If you get too far into the red when you are recording, you may get sound distortion. If you do not let your sound peak into the red occasionally, your recording is too soft. Test your meter to find out what it is telling you. Let that needle bounce up into the red and listen to what happens. Then you will know whether your meter is telling you that all red is bad or that a little red is alright.

If you want the best possible sound recording, get rid of the automatic gain control on your machine. With an automatic gain control, background sounds come in as loud and as close as the speaker's voice. Many magazines include articles about how to change your machine so that it will operate manually instead of automatically. You can make that adjustment yourself or have someone do it for you.

Consciously or unconsciously, the listener can "hear" how far a person is standing from the microphone, because the space between the speaker and the microphone is audible on the tape. To get a good voice recording, a good sense of the speaker's presence, place the microphone as close to the speaker as possible without getting distortion. Do not just set up the microphone and let the speaker stand back and talk. Position the speaker

two to six inches away from your microphone. The space is magnified tremendously as the speaker moves away. If the speaker is standing three feet away, it sounds like 25 feet. Record at pleasing levels, but close to the speaker.

You are stuck with the limitation of your equipment, especially the limitations imposed by a cassette recorder. A cassette recorder track is one-quarter the size of a professional track. Cassette tape runs at 1 7/8" per second, less than one-fourth the speed of professional tape. These things you cannot change. But you can use a good microphone. It is worth investing in a good microphone even if it costs as much as your cassette recorder.

Another mistake that people make is to use cheap recording tape. If you use a poor-quality tape, you are never going to get a good recording. Use studio-quality cassette tape. It is not that much more expensive in comparison to the time you put into recording that tape. Look for what is called low-noise, high-output tape. You are generally safe if you get the most expensive. A tape you spend three weeks recording is worth the extra dollar it is going to cost you to buy it.

To edit a tape, you physically cut that tape. When you are editing either voice or music, you have to do it on a downbeat. You cannot just chop your tape up or it is going to sound odd. Trained in music or not, most people can recognize the downbeat of a musical bar or of a voice because the downbeat has a little crashing sound. The way to find the downbeat on a piece of tape is to move the tape back and forth slowly, by hand, through the heads of your machine. Every machine has two or three heads. One head does the erasing, another does the recording, and the third does the playing back. If there are only two heads, one does both the recording and playback. Each sound takes up a portion or length of tape, and when you move the tape through the heads slowly, you can hear the crashing sound of the beat. To edit on this beat, mark the tape with a china marker (it is white and shows up well against the dark tape). As you hear the beat, mark the tape just past the head that is farthest to your right. This is the place you are going to cut.

Use an edit block to cut the tape—*not* scissors. Edit blocks are available in almost any electronic store and are crucial to quality editing. Make a diagonal cut on the tape. By cutting the tape on a diagonal, the tape will slide over the head at an angle and you will never hear the noise of the splice. It will go by unnoticed. Splice the tape together with splicing tape, not cellophane tape. Splicing tape is very thin. You will not hear it, and it will not harm the heads on your machine as it goes by.

Editing allows you to get the dynamics of sound the way they should be—tapering down and then coming out strong to something else. To determine when to do this (when it is appropriate) you have to get back to what the message sounds like—what it feels like—when you are putting the whole presentation together. Editing will allow you to keep your audience interested in the message you want to present.

Documentary Production

Presented by Denise Barclay
KCRA Television, Sacramento, California

A documentary can be produced in several ways. I feel that the best way is to shoot your film and then write a script to fit the film. Another way is to go out and shoot your film, then edit it, and write your script to fit your film. A third way is to write a script and then shoot the film and edit it.

If you choose the third way, you may go out to shoot your film and find something happening that you want to film, something that would be interesting to your audience. If you say, "That is not in my script; I had better not film that," you will probably come up with something that is very stock.

If you select one of the first two methods, you will probably come out with a film that is human. I personally feel that is very important, especially when you are dealing with a human problem like being deaf and blind. Attack the human side of the problem because you are dealing with people and you are trying to reach people.

When you start a documentary, be specific. Know exactly what you are trying to do. Are you going to use it for fund raising, or to get people angry, or to get them involved? What you want to accomplish will determine what you want to show. It will determine whether you will produce something serious, something light, or perhaps a feature type of documentary. Your purpose will determine what aspect of being deaf and blind you are going to film. You may get involved in causes or prevention, or just the deaf angle of it, or just the blind angle of it. If you want to touch on every aspect of deaf-blindness, make sure you do touch on *everything*. Do not leave your audience wondering what you meant to do.

If you are going to do a documentary, you must know your facts. Research everything that you say. Some good reference sources are the usual places like the library, and the state or county government, but you can also talk to people. Maybe they know something that you do not know. If so, ask them where they got their information and check it out.

Then, document your information. You can say, for example, "according to the Neilsen rating released in 1975 . . ." That tells people that you checked your facts.

You can use special effects in your documentary. For example, you can incorporate a small circle in the corner of the screen showing someone using sign language while the narration goes on. This effect will permit a deaf person watching the program to understand what is being said. Other special effects include adding music to express a mood or using two or three cameras to shoot your film.

If you do not have adequate facilities to produce a documentary, you will have to approach an outside production company. If this is necessary, you should consider carefully several aspects of production. The first is cost. One company may be able to do a 30-minute documentary at one cost and another company will do it at another cost. Many things are included in these costs, and you need to know what kind of job the company is going to do for you.

You have to be careful in choosing an outside company. Some companies will not actually bully you, but they will make suggestions and try to use your ignorance against you. They do not know how much you know, and so they figure that you do not know anything.

Investigate the company. Ask them what they have done and who they have worked for. If they are a reputable firm, they will be happy to tell you.

You also have to consider the time factor. If you have a specific deadline, tell them. If you have a lot of time to do the documentary, you will be able to do the research; if not, the company will have to do at least part of it, and that will add to the expense. As a general rule, a documentary will cost about $1,000 a minute to produce.

Television stations also produce documentaries, so you might want to contact your local stations.

If you are going to use a narrator, find someone who projects well. Do not let someone bully you into making him the host of your program. He may be the head of the department, but that doesn't mean he knows anything about hosting a program. This does not mean that you should go out and buy Hollywood talent, because that turns people

off. They are too slick to be believed. Try to find someone who looks average, who talks average, and who comes across warm on the air.

The most important point to consider is who the audience of the documentary is going to be. If you are going to talk to teachers, you can give them facts and figures and they will be able to relate to that. But if you are going to show your documentary to the general public, facts and more facts will turn them off. They are not that interested. Write for your audience. If you turn your audience off, you lose. No matter how good your production quality, if you can't hold your audience, you are lost.

Video Production in Media

Presented by Terry Smith
Media Specialist, Mountain Plains-Regional Center for Services to Deaf-Blind Children, Denver, Colorado
and
Howard Story
Media Technician, Los Angeles Autism Project

Videotape has three main or typical uses: communication, evaluation, and baseline recording. Communication is by far the biggest area.

Communication

One type of video communication involves teacher-to-teacher or program-to-program presentations. The purpose of this type of communication is to get the message back and forth between educators as to what kind of a program is offered in Talladega, for example, as compared to what is offered in Sacramento. Its value is in sharing information so that teaching expertise can be combined and made available throughout the country. Unfortunately, one of the major factors that is lacking in videotape communication is direct program-to-program contact. A few of the larger areas employ media people to work directly with program personnel to make program presentations. But in the Mountain-Plains Region, we have only three media people serving the entire region of eight states. So those media people can do only a few program presentations.

Another important use of videotape is in communication between teacher and parent. If you bring a parent into the classroom to observe, the child will not perform in the same way as when the parent is not there. And conversely, when the teacher goes to the home, the child does not perform in the same way. So to get as true a picture as possible of the characteristic behaviors that are causing trouble, we videotape the deaf-blind child. Communication via videotape can enlighten both parents and teachers. It enables the teacher to say, "These are the goals and objectives we have for your child; these are the activities we are trying; and this is the way you can help at home." The parent can then take the videotape home and show it to other family members as well. However, videotape is not the answer for everything. Parents need personal contact. Videotape augments what the teacher has to say.

Explaining programs to parents is another important use of video communication. Videotapes can be used to show parents the classroom and help them understand the things that are going on in school. Not all parents, for example, have the opportunity to see what summer camp is like. So when we make videotapes at camp and show them when we get home, everybody gets to see the children and enjoy what is going on. It gives parents a greater understanding of what is going on in the program.

Another important use of video communication is in explaining the program to the administering agency. No one can go into a program for two or three hours and come out with an understanding of everything that went on. A videotape can show in a very short time what goes on in the program in a whole week in comparison with what one can see in two or three hours. You can use the videotape to communicate what you are doing, what you could be doing, and why you cannot do everything at present. But, to do this well, you must know what the specific message is that you want to get across to your administering agency.

Another important use of videotape is in explaining the program to outside agencies. Outside agencies such as those concerned with vocational rehabilitation, the State Department of Recreation, or Special Olympics, Inc., may be unfamiliar with deaf-blind children. Videotape presentations can be used to explain what your children are like, what they are capable of doing right now, and where you see them going.

Long-range goals must be set for these children, not a self-fulfilling prophecy but a flexible long-range goal. For example, "I predict that in five years Billy, who is in an institution now, is going to be living in a foster home and have certain services available to him." The services may not exist now, but we have made that our goal. So we make a videotape and take it to vocational rehabilitation counselors, group homes, convalescent hospitals,

and foster parent groups to identify what the actual situation is. Videotape can help you show vocational rehabilitation counselors, for example, what is going on in the classroom and what deaf-blind children are really like. Many vocational rehabilitation people have never seen a deaf-blind child. Suppose a child reaches the age of sixteen before the teacher decides to contact vocational rehabilitation specialists. The child may be age-eligible for vocational rehabilitation services, but is still lying in a crib. The vocational rehabilitation personnel may come in and say they cannot work with that child. They need someone that at least halfway fits into the system. Watching deaf-blind children on videotape will help them determine what skills they need to develop to function in certain situations.

In turn, you can make a videotape of vocational settings or foster homes and take it back to the program Billy is in so that everybody at the program level will understand what they have to do to get Billy in one of these environments. The videotape can help teachers to anticipate the skills required.

Communicating with civic organizations is the public relations aspect of video communication. Decide what your specific message is to be before you make the videotape: "We need your physical help to have a Christmas party," or "We need your monetary help to get some of these children to summer camp." Film the children, show what your needs are, and let the videotape be a discussion opener.

Communicating with legislators is also a type of public relations. We can help the staff and administrators and parents impress state or federal legislators with the need for a moral commitment to the deaf-blind and more funds by putting together a well-planned video presentation. But you have to be careful. A lot of anti-film feeling has been generated because some groups have made big, flashy productions in an effort to get money. Their intended message did not come across. The message that did come across was that the film was an expensive production, and the first question asked is how much did the film cost. When you take a videotape to your legislator, do not try to razzle-dazzle him.

Just as legislators appreciate hearing from persons who have rational and logical concerns, they appreciate being able to gain additional information from videotape presentations which show the facts, the needs, and the justifications. Do not be emotional. Present the facts: This is what we have; this is what we want to do; and this is what we need.

You can use an emotional approach and film sad stories and hysterical parents and influence a legislator because he is embarrassed. That legislator may change his mind, but what you may have done is lose a friend in that legislator. Convince the legislator that he is on firm ground in asking for more money for your project; then you have done a good job. That is the message you should try to get across when you talk to legislators.

Evaluation

The second major use of videotape is in evaluation, not child evaluation but staff evaluation. Evaluation is usually a scary experience for staff members. You have to work to get the message across that you are not going to put on record that the teacher is incompetent and that you are not going to use the tape to get the teacher fired. You have to convince the teacher that videotape can be a very useful self-evaluation tool and that the tape is not going to be used by anybody else. Videotape is not supposed to be threatening. It is supposed to be an aid. That is the toughest message you have to get across.

Start by getting one teacher involved. If you can sell one teacher on the use of videotape for self-evaluation and get that teacher to see the many uses for the tape ("Boy! I can really look and see how the kid is responding to me. I can see the relationship from the outside. I can get a better look at the child"), all of a sudden, other teachers, aides, and even parents get involved.

These tapes can be used for staffing sessions and communicating to people who cannot be in the classroom all of the time. They can be used to show what is going on and to say, "This is what I am trying to do and it is not working." The film allows ancillary staff members to observe simple things the teacher might be missing because he cannot always be objective with the children.

Baseline Recording

The third major use of video communication is in baseline recording. Baseline recording presents many problems. First, you must establish why you want to make baseline recordings. Then you have to outline what is going to go on during the recording, who is going to be included in the recording, how long each activity is going to be taped, what the purpose of the videotape is, and how the tapes are going to be used when you are finished with them.

There are not any standard children, standard programs, or standard teachers. There are too many variables to say this is the one way to solve a problem. But there are some basic things that have to be done to get a worthwhile baseline recording.

First, organize a team. The team should include the teacher, an aide, and the media specialist. The media specialist needs to be involved in the planning so he will know what the purpose is, where to put the camera, and how to get the best picture. If parents are available, include them. The team needs to know the children, their needs, and their abilities. Take time to develop a relationship with each child. Establish goals and objectives; then determine the areas that are to be recorded for each student. To avoid getting into hassles, keep in mind the purpose of the videotape. For me, the purpose of a baseline recording is to show an activity as it is done by the child. You need to know what sequence the child went through to complete the activity. Did the child just hit and miss, did he or she attend visually, did he or she use a pincer grasp, what kind of motion did the child go through to perform the task? These are the things you need to know.

Establish a list of activities, times, procedures, and placement–a schedule to be followed when doing the video recording. You need to plan where the filming is going to be done, what is going to be needed, who is going to be there, and what kinds of activities are going to be used. Then make your tape.

Baseline recordings can also be used for progress reports, but the tapes need to be supplemented with written materials. Tapes will give you only a visual picture of what the child is like.

Establishing and maintaining a video program involves certain problems. Preventive maintenance, for example, is necessary for all videotape equipment. You have to have some sort of regular maintenance program. You can do it yourself; you can get university audiovisual technicians to assist you; you can write a service contract to make sure that everything is up to date. The equipment needs to be maintained because the tapes you make are useless without it. Most school personnel use and use and use equipment. Then when it breaks, they complain that it is not good and that it costs too much to get it repaired.

In addition to maintenance, other problems involved in maintaining a video program include lack of manpower, lack of equipment, equipment breakdown, and slow repair. These are some of the constraints that a small or low-budget program staff must consider in planning for and using video productions.

How to Conduct A Workshop in Preparing "Hands-On" Materials for Deaf-Blind Children

Presented by Mary Tarling
Program Specialist, Pace Elementary School, Bellflower, California

The intent of this workshop is to model two things: one is a process for inservice training for people working with deaf-blind children and the second is to identify some products that might be new to you.

Five basic curriculum areas are covered: social-emotional, motor, language, cognitive, and daily living. Anything mediated that could be used in these areas has been included. Some media overlap and can be used in all areas (e.g., films and overhead projectors).

Try to present things that you know are being used successfully. Everything included in this workshop has been used by teachers with deaf-blind children. Many things are available that look good but have not yet been tried. They should be tried, but do so before you present them to teachers.

All of the items that we have here today are easy to make. They are things that teachers can make from old scraps or from materials that you can buy cheaply or put your hands on quickly. Those were the main criteria used to choose products shown here. These items are not classy or expensive, but they are functional. This workshop presents quick, cheap, and easy-to-make items that really work with deaf-blind children. They are all items that you can train teachers to make and use.

The process is a learning-center approach that is self-directed with task cards at each table. Task cards are printed on heavy paper and then folded in half so they stand up on the table and can be read from both sides (see page 14 for sample task card). The products we show are merely teasers. Each station could be developed into a workshop of its own. No one area is developed in depth. Instead, a number of ideas are presented with the idea that they will stimulate you in terms of your own teachers and your own children.

Five sample stations have been organized (see page 15 for list of suggested learning centers). The activity at each station lasts approximately 20 minutes. You will have too much stimulation in the room to expect people to stay much longer than 20 minutes in each area. Each station is planned to accommodate eight people for a 20-minute period.

Before people start rotating from station to station, give each a sheet of six to eight name stickers. Have the participants write their names on the stickers so they can use them to identify the items they make and pick them up later when the workshop is over. You can also provide each participant with a box, such as the one they will need to make a rear projection screen, and let them carry their items in that.

Each person is also provided with a list of the stations and a diagram of where each is located. Each is also given the number of the center where he or she is to begin, so people will rotate in order.

Station 1 consists of a slide-show demonstration of products and pictures of children using materials that are not physically available at this workshop. Many of the materials included in the slides are commercial, expensive, large, or difficult to obtain. In other words, they are materials that did not fit our initial requirements but were still valuable enough that we felt teachers should be introduced to them. For some of the products, we have been able to suggest ways to make similar things and have provided schemata so that you can make your own.

The workshop should be brief, lasting from one to one and one-half hours. That allows most people time to finish most things. Not everyone gets closure and that is good. It leaves them feeling that they want to continue.

NOTE: After going through the stations and making the different products, the groups met together to critique the process and to share ideas on the items presented. It also allowed them time to develop ideas on how they would present this kind of "hands-on" workshop to meet the unique needs of their own teachers and programs.

Sample Task Card

FOLD

Station 2 B Time: 10 minutes

Goal: To experience the procedure of making a learning carrel projection screen.

Objective: The participant will make a learning carrel projection screen, following the model presented, for his own use.

Method:

1. Read the entire task card before proceeding.
2. Select one set of patterns (color coded).
3. Trace the pattern pieces on tag board.
4. Cut out the pieces.
5. Assemble with masking tape, following the model presented.
6. Apply name sticker.
7. Collapse the carrel for easy carrying
8. Straighten up work area:
   a. Stack patterns by color code.
   b. Replace pencils, scissors, and tape.
   c. Throw away scraps.

Material:

1. 1 piece of heavy tagboard, standard size
2. Tape
3. Scissors
4. Pencils
5. Patterns

Curricular area: Any area of curriculum

Usage: Readiness, initiation, application, reinforcement, individual learning center, assessment, evaluation

Adaptation: Put acetate over screen for direct writing with water-base pen; commercial, teacher-made, student-made, film strips, slides, overheads.

Prerequisite skills: Functional vision. Other skills required depend on the developmental level of the materials presented and the amount of assistance available.

List of Learning Centers

(Those in attendance at the conference had the opportunity to participate in 17 activities at the five stations that were organized to show the types of materials and experiences that can result from such a workshop. The activities at each station are designed to last approximately 20 minutes.)

Station		Description of activity
1		Slide show of media not physically available at the workshop
2	A	Making a rear-projection screen
	B	Making an individual learning carrel screen
3	A	Designing, making, and splicing a film strip
	B	Making an audiovisual card
4	A	Waxing
	B	Vibrating chair
	C	Sensory form-board
	D	Auditory make and match
	E	Nonverbal communication systems
	F	"Pee beeper"
5	A	Experience "deaf-blindness"
	B	Overhead projector
	C	Florescent paint and black light
	D	Auditory localization
	E	Light drum
	F	Rheostat

Graphics in Media

Presented by Don Chandler
Owner, Commercial Graphic Production Company, Sacramento, California

I would like to give you some ideas for preparing graphics for deaf-blind children. You must create a visual impact message, something that these children can respond to in terms of large type, in terms of an interesting juxtaposition of colors, in terms of graphics that they can relate to.

I would like to give you some suggestions for preparing graphics of an instructional nature that are designed for closed-circuit television programs.

When lettering your graphics, you may not be able to afford type setting. If not, dry-transfer type faces are available. With these you simply burnish the characters on the background. Black is a very safe background to use; it works well and is very forgiving. If you work on a blue background, for instance, any blemishes on the paper are going to show. The blemishes on black paper will not show. You can illustrate on the black background, using white letters. Or, you can use black letters on a white background and adjust your camera so that it will give you a negative image.

A large number of black and white television sets are still in use, and whenever you do graphics you have to be aware of that. That does not mean that you have to confine your thinking to black and white, but you have to determine whether the colors you use have adequate contrast for black and white sets. A good example is use of red and blue together. Red and blue are critically close to each other on the grey scale. This will give you trouble, especially in materials in which you need good definition.

Preparing graphics for a slide presentation is much simpler than for television, because you do not have to be concerned with the electronic peculiarities of television. If you produce a television commercial or documentary that requires a stark, harsh change of values from a deep, dense blue to a bright yellow, the tubes are going to suffer. You are going to get some tearing or visual vibration. This does not occur in a slide presentation. You can get by with anything. But if you are trying to prepare materials that can be used for either a slide presentation or for television, you have to be sensitive to color combinations. There are not any limitations to the colors you can use. Your concern should be with how you use color and what colors you use together.

You will learn about use of colors through experience. If the colors you choose do not work, maybe the problem is the light, the camera, the system. Identify the limitations of your equipment, and then apply your knowledge of colors.

You are often asked how long it takes to produce a program. Your budget is often quite low and your time is limited. Good graphics do not need to be time consuming or expensive. You have got to think of techniques that are quick. You need to come up with something without going into a lot of work.

Go through magazines to get ideas of things that have been done and to get ideas for your own work. By applying parts of these graphics examples to acetate with a hot press, you can develop an inventory or stockpile of graphic symbols for food, health, or any other topic you work with regularly. Reusing graphics is a highly recommended and economical measure. By placing your graphics on acetate, you can reuse them by simply adding different copy with a card or an acetate overlay.

When preparing graphics you want to inform as well as entertain, so use a decorative treatment as much as possible. I think vision-hearing impaired children will respond to this kind of treatment.

Copyright Law and How It Pertains to and Affects Media in Education

Presented by George Fuhrig
Copyright Attorney, Oakland, California

My preliminary and most urgent admonition would be that when you creative people write something, whether it is to be for audio or video, you should copyright it. I know that being dedicated people, you are more givers than takers, especially in the field of deaf-blind education. You do not want to exploit your work; you want to give it to the world, and you should give it to the deserving academic world. But what happens when a commercial company discovers your material has no copyright? The sole purpose in copyrighting material should be to see that it is used by the proper people for the proper purposes and with due credit to the copyright owner and his courtesy in permitting reproduction. Most people are willing to allow reasonable use of their material with little or no compensation, but they should be given credit as the source.

The question of fair use is very tricky. It came into being by virtue of judicial decisions interpreting what constitutes fair use and that is fundamentally a bad thing. Under our system of government, with its checks and balances, the judicial department is not supposed to make the law. The doctrine of fair use is not covered at all in the copyright law of 1909. Criteria for determining fair use has been enunciated by judges as a matter of necessity. Since judges differ in their individual temperaments, convictions, and prejudices, you get various decisions on cases.

We are operating under a copyright law that is more than 66 years old, and there has been only one substantial amendment or change in that law. That was the recording bill enacted in 1971 which outlawed record piracy for a limited period. It was an experimental bill and applied only to recordings which were in fixed form after January 1, 1972. The law was due to expire January 1, 1975. In the last days of December, 1974, Congress renewed the law and made it perpetual. It is now on the statute books.

Aside from that change, no major amendments have been made in the law of 1909, and it is very cryptic in places. Those of you who specialize in audio and visual media, motion pictures, or graphics should read carefully the definition of works which are subject to copyright under the law of 1909. I quote Section 4: "The works for which copyright may be secured under this title shall include all the writings of an author." That covers literally only literary work. What about your musical works, your dramatic works, your pantomimes or choreographic works, pictorial graphics and sculptural works, motion pictures, audiovisual works, and sound tracks? None of these were named in the original copyright statute of 1909.

It is true that regulations within the copyright law permit their registration, but they are not specifically defined. We have pending Senate Bill 1361, a new and revised copyright law. This bill was introduced April 4, 1954, but has still not been passed by Congress. That is something that we copyright lawyers and also you people who are interested in educational television and media should be speaking to our various associations about. We should be exerting every influence we can to get Congress to modernize the copyright law.

Copyright and Audiovisual Media (page 20) presents 22 situations to test your estimation of permissible copyright use or infringement. My interpretation and a legal reference point for each of the 22 situations follow. You will get few clear cut answers as to whether an infringement exists or not. In all honesty, gray areas exist. Hopefully, the doctrine of fair use, which is carefully explained in the proposed new copyright revision, will become law and then we can expect more enlightened and consistent decisions on the question of fair use. Currently, the following four criteria are used to determine "fair use": (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

Copyright and Audiovisual Media
Situations and Interpretations

1. **A school district buys one copy of a 16mm educational film and makes ten video cassette copies for individualized instruction at various school media centers.**

This case illustrates a clear cut example of copyright infringement resulting from utilization of new technology even though the copyright proprietor was not engaged in producing or reproducing video cassette copies of its educational film. The copyright laws forbid the reproduction of a copyrighted work by anyone except the copyright proprietor. The fact that the school district bought the copyrighted book does not mean it bought the right to reproduce it.

In *Douglas International Corporation* v. *Baker* 173 USPQ 144 (D.C. S.N.Y. 1971), the Federal District Court decided that the owner of a copyrighted book has the right to produce the book in dramatic form and can sue to enjoin an infringing play *even if he or she is not at that time producing a play*. (Emphasis added).

2. **A mobile media unit regularly travels from school to school in a district and converts phonograph records into audio cassettes for individual teachers.**

The school could not claim the benefit of the provisions of the 1909 Copyright Act as to compulsory licensing of musical compositions. Unauthorized duplication of sound recordings may subject the school district to legal liability. The U.S. Congress enacted the Sound Recording Amendment to the copyright laws, which protects recordings fixed subsequent to February 15, 1972, and prior to January 15, 1975. The proposed revision of the copyright laws now pending in the Congress of the United States provides for full protection of sound recordings.

In *Shaab* v. *Kleindienst et al.* 174 USPQ 197 (D.C. D.C. 1972), the Federal District Court ruled that although the Copyright Act of 1909 contains a compulsory licensing provision with respect to copyrighted musical compositions, it was reasonable for Congress to omit such a provision from Public Law 92-140 which establishes copyright protection for sound recordings.

3. **A teacher records excerpts on cassettes from various record albums owned by the school to illustrate comparisons among various musical forms.**

Assuming that this use satisfies all four criteria of fair use, particularly Criterion No. 3 (that the excerpts did not constitute a substantial or important part of the recordings) and Criterion No. 4 (that the use of the cassettes did not have an adverse effect on the potential market for or value of the copyrighted recordings), it is possible that a court would hold that the recording of these excerpts constituted a fair use.

As in so many situations of this kind, it is difficult, if not impossible, to find a case in point. Perhaps the best that can be done is to rely on dicta in decisions holding that the defense of fair use does *not* apply.

In *Meredith Corporation* v. *Harper & Row Publishers, Inc., et al.* 182 USPQ 609 (D.C. S.D. N.Y. 1974), the Federal District Court held that defendant was entitled to a preliminary injunction enjoining plaintiff from selling a competing textbook prepared by Meredith Corporation. Plaintiff, Meredith Corporation, had filed this action for declaratory judgment of noninfringement of copyright.

In support of his decision, the judge said: "Originally fair use was based on the assumption that the user might copy an insignificant portion of protected material while freely using unprotected material. The doctrine then developed to permit more than insignificant copying of protected material when such copying was clearly in the public interest and served the underlying purpose of the Copyright Act, to wit: To promote the Progress of Science and Useful Arts . . . (U.S. Constitution, Article 1, Section 8).

"In determining whether the use here is fair, I conclude the following three factors should be considered: (1) the competitive effect and function of the usage; (2) the quantity of the materials used; and (3) the purpose of the selections made."

With regard to the first factor, the judge found that the textbooks, both on the subject of child psychology, were competing for sales in the identical market. Of the second factor, the judge said, "Perhaps one-third or more of the Meredith book is, in my opinion, a recognizable paraphrase of Mussen, third edition." As to the third factor, the judge found that the defendant's purpose in taking material from plaintiff's publication was to enable defendant to compete with plaintiff and

avoid the extensive research which plaintiff had conducted in writing the original text.

In *Rosemount Enterprises, Inc.*, v. *Random House, Inc.*, 366 F2d 303 150 USPQ 715 (C.A. 2 1966), the Court of Appeals reversed the decision of the Federal District Court of New York granting a preliminary injunction against Random House, restraining the sale, publication, distribution, and advertisement of its biography of Howard Hughes.

In support of its decision, the Court of Appeals said: "To serve that purpose (to Promote the Progress of Science and the Useful Arts) courts in passing upon particular claims of infringement must occasionally subordinate the copyright holder's interest in a maximum financial return to the greater public interest in the development of art, science, and industry."

One of the important factors which influenced the decision of the Court of Appeals was that the plaintiff's original biography of Howard Hughes was published in three 1954 *Look Magazine* articles which contained some 13,500 words which, if published in book form, would have filled some 36 to 39 book-size pages. Defendant's biography in book form consisted of 116,000 words and 304 pages. Also only a small amount of material was taken from the original work.

4. A school media center coordinator salvages some useful frames from discarded filmstrips and converts them into slides for student use.

Even if the number of frames used in this situation were very small, such small usage may be unfair if it is of critical importance to the work as a whole and is taken by the infringer in order to save the time and expense incurred by the copyright owner. See *Colonial Book Company* v. *Amsco Book Company* 41 F Supp. 156, 51 USPQ 33 (S.D. N.Y. 1941). In that case the Federal Court held that there was copyright infringement even though diagrams on only 11 pages of defendant's 254-page book infringed those in plaintiff's book.

5. A student taping a report on a new travel book in the school library used "Around the World in Eighty Days" as background music.

There are two possible defenses to a complaint for copyright infringement in this situation. (1) That the student's report is intended only for library use. The hearings in the sound recording bill indicated that its prohibitory provisions did *not* apply to the lending of sound recordings by nonprofit libraries. (2) It is not the intention of the committee (House Judiciary Committee) to restrain home recording from broadcasts or from tapes or records, of recorded performances, when the home recording is made for private use and with no purpose of reproducing or otherwise capitalizing on it. *(The Electra Records Company et al* v. *Gem Electronics Distributors, Inc.*, 179 USPQ 617 (D.C. E.D. N.Y. 1973).

6. A school district occasionally makes a videotape of a preview print of a 16mm film in order to allow teachers to preview it over a longer period of time.

Section 1(a) of the Copyright Law of 1909 provides that the copyright owner "shall have the exclusive right to print, reprint, . . . copy the copyrighted work." Therefore, subject to the possible defense of fair use, this videotape reproduction is a technical copyright infringement.

7. A high school student uses an opaque projector to enlarge a map from his younger brother's geography book to help him draw a poster showing the location of Indian reservations.

It seems apparent that the purpose of this student in enlarging the copyrighted map from his younger brother's geography book was not to copy such map but to use it as a reference to assist him in the independent preparation of a poster showing the location of Indian reservations. This would result in a new (not derivative) copyrightable work which should not be competitive with the original copyrighted work in the geography book.

8. The Department of Televised Instruction of a school district uses a film chain device to televise 16mm educational films from its library over its closed circuit system to every school within the district.

It would be highly advisable to request a license to televise those educational films over the school district's chain device. However, although the televising of these films is undoubtedly a "performance," we must consider whether these educational films are nondramatic or dramatic works. If they are nondramatic, the performance is an infringement only if it is presented "for profit" under the provisions of Section 1(c) of the Copyright Act of 1909. It is highly unlikely that a public school would present a nondramatic work for profit.

On the other hand, if the educational films were held to be dramatic works, their performance, whether or not presented for profit, would be a copyright infringement. Because of the narrow line of demarcation between dramatic and nondramatic works, it would be highly advisable to request a license for any type of performance.

9. The Department of Televised Instruction of a school district makes a videotape copy of a film in order to televise it on the closed circuit system utilized by the district for all classrooms within its jurisdiction.

This is clearly an infringement under Section 1(a) of the Copyright Act of 1909, which gives the copyright owner the exclusive right "to copy and vend the copyrighted work." The fact that only one copy has been made does not excuse the infringement, although it will be a factor in reducing the measure of damages.

10. Upon the request of several schools, a district media center prepares sets of color slides showing the evolution of the American Flag as published in an encyclopedia.

As in Item 4 above, the taking of the illustrations of the evolution of the American Flag is small when compared to the large amount of material contained in an encyclopedia. Therefore it could be argued that this is fair use under the first three criteria of the fair use doctrine. However, with regard to Criterion No. 4, does not this taking have an adverse effect on the possible sales of additional encyclopedias to the several schools which receive the colored slides reproduced from the encyclopedia?

It should be relatively simple to obtain permission from the publisher of the encyclopedia to reproduce the slides. Even if the publishers were not the authors of the illustrations, they would probably cooperate in obtaining consent from the original author or copyright owner or at least advise the district media center as to the name and address of the copyright owner.

11. A professor prepares a presentation for approximately 300 students on art history and wishes to illustrate a point by showing information on the screen. The only slide of the object he or she wishes to show contains several other items which will distract from the point he or she is trying to make. The professor then requests that the photo be reproduced by the media production center and that the reproduction show only the single item in an enlarged state.

In addition to making copies of the slide, there is the question of distortion of the original copyrighted work. Professor Nimmer on Page 446, Section 110.3, of his book entitled *Nimmer on Copyright*, states: "An act which destroys the value of the author's copyrighted work may under certain circumstances constitute a form of unfair competition, or perhaps even copyright infringement." (*Addison-Wesley Publishing Company* v. *Brown* 207 F. Supp. 678 (E.D. N.Y. 1962).

12. A school media center makes multiple cassette copies of entire classical music albums which are not available in cassette format.

In addition to violating the October 15, 1971, law covering sound recordings, the making of these multiple copies does not qualify as fair use under Criteria No. 3 and No. 4. The recordings are reproduced "in their entirety" and the use of the multiple copies will inevitably have an adverse effect on the potential market for the original recordings and the value of these copyrighted works.

13. A school media center makes multiple cassette copies of music albums in their entirety even though the records are available in cassette format as well as disc.

This situation is a more serious infringement than that discussed in Item 12 above. The plaintiff could not only recover additional monetary damages but also demand that the infringing copies be delivered up for impounding during the suit or destruction if the court decides that an infringement has occurred.

14. A school videotapes various educational and commercial telecasts off the air for playback at more convenient times during school hours.

Again, these videotapes would not qualify as fair use under Criteria No. 3 and No. 4. Apparently the telecasts are appropriated in their entirety, and the use of the videotapes would have an adverse effect on the potential market for or value of the copyrighted works.

15. To provide visuals for a study of desert flora, a teacher makes several transparency lifts from a magazine showing a variety of desert growth.

These transparency lifts should be very carefully considered to determine the amount and substantiality of the portion used in relation to the copyrighted work as a whole (Criterion No. 3). Also Criterion No. 4, the possible effect of the use of the transparencies on the potential market for the magazine containing the copyrighted illustrations is an important factor.

As in Item 10 above, unless the amount of material taken is insignificant, it would be advisable to obtain the consent of the magazine. Publishers are usually quite receptive to requests from such noncompetitive institutions as schools. Even if magazine publishers are not in a position to grant reproduction rights, they will frequently assist in obtaining permission or at least will

furnish the inquirer with the name and address of the owner of the copyrighted material.

16. A teacher tapes a lesson for instructional television, illustrating the topic with various film clips from the district's circulating collection.

Assuming that this tape qualifies as a fair use under all four criteria, it should be determined whether this is a "derivative work." A derivative work is one which is based in whole or in substantial part upon a prior work. In this case the teacher's tape would probably not be a derivative work because it apparently utilizes a substantial number of different film clips and is not based in whole or in substantial part on one work.

17. A teacher copies various musical selections from radio programs onto audio tape to illustrate the forms of certain kinds of musical compositions.

In the absence of consent from the radio station, the only defense to a complaint for infringement would be fair use. The school would have the burden of proving that its tapes comply with all four criteria of fair use, particularly No. 3 and No. 4.

18. A professor has used a film in his or her class and wishes to review the film with his or her students by selecting specific frames from it. The process is to make a 35mm color slide of each of the individually selected 16mm frames.

In addition to satisfying the four criteria for determining fair use, the professor would have to show that his or her work is not a "derivative work." This would be difficult because unlike the situation in Item 16 above, this professor's work *is* based in whole or in substantial part on the prior work.

19. A teacher introduces a new workbook to the class and makes an overhead transparency of one page so that he/she can demonstrate how the students will work in their own books.

The reproduction of an overhead transparency of one page would appear to qualify as a fair use because (1) the purpose and character of the use is to aid students in the proper use of the copyrighted workbooks and not to substitute another workbook or worksheet; (2) the nature of the copyrighted workbook would seem to justify the teacher's action as a reasonable use of the workbook as an educational aid; (3) although the number of pages in the workbook is not indicated, it seems apparent that the reproduction of one page would be insignificant in relation to the copyrighted work as a whole; (4) it is arguable that the reproduction of the one page for the purpose of assisting in the efficient use of the copyrighted workbook would actually have a beneficial effect on the potential market for or value of the copyrighted work.

20. A media center in a large high school tapes music selections from various radio broadcasts to illustrate various forms of popular music and makes copies of the tape available to all the music teachers in the school.

Multiple copying does go beyond the concept of fair use. Also, in this case, it is very doubtful whether the tapes satisfy Criterion No. 4 of the fair use doctrine. Such extensive copying and use would appear to have an adverse effect on the potential market for and value of the copyrighted radio broadcasts.

21. The audio portion of an evening television documentary on drug abuse is taped by a teacher for playback the next day in a health class.

The making of only one tape is still an infringement if it does not qualify under the four criteria of the fair use doctrine, and this taping does not appear to so qualify.

22. A central media production unit regularly duplicates selected pages from primary grades state reading texts into large charts for use in small group instruction.

This regular copying, even if the number of pages copied is small, appears to go beyond the fair use concept. See *Colonial Book Company* v. *Amsco Book Company* 41 F. Supp. 156, 51 USPQ 33 (S.D. N Y. 1941) in which the Federal District Court found infringement even though diagrams on only 11 pages of defendant's 254-page book infringed the copyrighted diagrams in plaintiff's book.

23. In your opinion, have any copyright laws been broken in the preparation of this presentation?

This is a difficult question to answer in the absence of more background facts concerning the preparation of the presentation. The presentation is excellent and appears to have been prepared by a competent copyright attorney. The following conclusions are necessarily based on certain assumptions:

(A) The attorney or other expert who prepared it does not appear to have copied substantial portions of prior copyrighted works of copyright authorities such as Nimmer or Ball. True, he refers to such terms found in Nimmer and Ball as "fair use," "derivative works," "performance," and so forth. However, these are "words of art" com-

monly used by many copyright attorneys, and their use would not constitute a copyright infringement.

(B) Assuming that a copyright attorney was retained to prepare the *Copyright and Audio-Visual Media: Discussion Guide*,[1] there could be a question as to whether he reserved common law or statutory copyright rights in his work. Again, assuming that he was paid for his work, the general rule is that the entity which requested the work (California Association for Educational Media and Technology and the Educational Media Producers Council) owns the copyright rights as an "employer for hire." This general rule would prevail unless the attorney or other author specifically reserved his copyright rights.

[1] *Copyright and Audio-Visual Media: Discussion Guide*. California Association for Educational Media and Technology and the Educational Media Producers Council.

I would like to add one admonition to the precautionary advice set forth in the *Discussion Guide*. Notwithstanding the expanding doctrine of fair use, if there is *any* doubt regarding whether a proposed use complies with all four criteria of fair use, get clearance! Based on years of experience in handling copyright problems for the Standard Oil Company, I have found that most publishers are most cooperative in granting reasonable requests for permission to reproduce copyrighted material provided that their copyright notice and credit line is used in the reproductions.

I also want to express my intent to assign all common law and statutory copyright rights in my presentation to the appropriate association or governmental agency which may wish to use it as an aid in rendering services and disseminating information to deaf-blind children.

Copyright Permissions

A Guide for Noncommercial Use from the Association of American Publishers

INTRODUCTION

The purpose of this brochure is to simplify and expedite, to the greatest extent possible, the seeking and granting of requests from educators, librarians, and other noncommercial users to duplicate portions of copyrighted materials. The most common complaint from users is that permissions or even acknowledgments of requests are slow in coming and often, in fact, never appear. Publishers respond that the information necessary to process a request is often incomplete and inaccurate. The Association of American Publishers is offering this pamphlet with the hope that it will help to establish guidelines that will find general acceptance and will simplify and make uniform the information required to satisfy the needs of the noncommercial user.

Please keep this information handy and use it as a reference the next time you need to request permission to duplicate.

WHEN PERMISSION IS NEEDED

"Fair Use" means the extent to which a copyrighted work may be copied without the permission of the copyright proprietor. It is simple to say that permission to duplicate is needed for any copying that is done beyond what is judicially and historically considered "fair." What is not simple is setting an exact rule that categorically delineates what is or is not permissible. The Congress, after almost two decades of debate, has listed the following criteria for consideration of "fair use": (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

It is possible to offer some general guidelines. However, in such a philosophical matter as copyright there will be those who disagree. The spectrum runs from the "no one should copy anything" position to "all information should be freely available to everyone in any form." Using the current version of the copyright revision bill as a basis, here are some principles that might help you in determining whether or not permission should be requested:

- Photocopying or duplicating by an individual for his or her own use, as long as it is a single copy of an article, short poem or small portion of the work as a whole, is generally considered fair.
- Systematic duplication, whether making multiple copies at one time or single copies that in the aggregate add up to multiple ones, is beyond the boundaries of "fair use."
- The fact that a duplication is for a nonprofit use has no bearing on the question of fair use.
- The systematic interlibrary exchange of photocopies of copyrighted articles that serves as a substitute for purchasing more subscriptions is beyond the bounds of fair use.

HOW TO SEEK PERMISSIONS

Under U.S. copyright law, the title page or the reverse of it is the appropriate place for the copyright notice, which consists of the year of publication, the name of the copyright owner and, in general, any acknowledgments of other copyrighted material used in the book. In this context, the word "acknowledgment" indicates that some materials were originally published elsewhere, and that the copyright for these materials remains with the original owner. It is wise to check this page when requesting permission to duplicate, since the material in question may be the property of an author or publisher other than that of the material you are using.

This page is also useful in determining the actual copyright holder (particularly in the case of paperback editions, reprints, etc.) because the material is, unless marked "original edition," probably still the property of the first edition publisher. In the case of audiovisual materials, this notice is printed on the label. Some materials, graphs, charts, or photographs may not be the property of the immediate publisher or author, and thus permission to duplicate cannot be granted by that publishing house.

After checking to determine who owns the copyright on the material, the next step is to request permission to duplicate. One of the most frequent reasons cited by permissions departments for delays in answering requests of this nature is incomplete or inaccurate information contained in requests. A survey of permissions professionals conducted by the AAP determined that the following facts are necessary in order to authorize duplication of copyrighted materials.

1. Title, author and/or editor, and edition of materials to be duplicated
2. Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material
3. Number of copies to be made
4. Use to be made of duplicated materials

5. Form of distribution (classroom, newsletter, etc.)
6. Whether or not the material is to be sold
7. Type of reprint (ditto, photocopy, offset, typeset).

The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be readily obtained in a publication entitled *The Literary Marketplace*, published by the R. R. Bowker Company and available in all libraries.

Because each request must be checked closely by the publisher, it is advisable to allow enough lead time to obtain the permission before the materials are needed. Granting of a permission to duplicate is not simply a "yes" or "no" matter. (Although many publishers have a minimum or no-charge policy for such uses by noncommercial organizations, they must first review the status of the copyright to see if the power to grant duplication rights of this nature is within their scope or province.) Each such request requires a careful checking of the status of the copyright, determination of exact materials to be duplicated (which sometimes involves ordering a copy of the material from a warehouse), and assignment of author's royalties if fees are involved. Some helpful hints from those involved daily in the processing of permission include:

1. Request all permissions for a specific project at the same time.
2. Don't ask for a blanket permission—it cannot, in most cases, be granted.
3. Send a photocopy of the copyright page and the page or pages on which permission is requested.
4. Make sure to include a return address in your request.

MOST IMPORTANT: Check and doublecheck to make sure that all your information is complete; the more accurate the request, the more rapid the response.

Sample Request for Permission

GORDON SCHOOL DISTRICT
ALPINE, TEXAS

February 6, 1975

Permissions Department
Harvey Book Company
3 West Road
Baltimore, Maryland 21214

Gentlemen:

I would like permission to duplicate the following for use in next semester's class:

Title: *Helping the School Librarian*, Second Edition
Copyright: Harvey Book Company, 1965, 1971
Author: Sara Howes and Don Johnson
Material to be duplicated: Pages 23, 24 and 57 (photocopies enclosed), all in Chapter One
Number of copies: 25
Distribution: Continuing education classroom; the material will be distributed gratis to students.
Type of reprint: photocopy.

The checklists contained on the pages listed above will be used as supplementary materials for a training class.

A self-addressed envelope is enclosed for your convenience.

Please let us know what your fee will be for this permission.

Sincerely,

John Craig, Director
Continuing Education Department

WHY PUBLISHERS ARE CAREFUL ABOUT COPYRIGHT

Copyright is the cornerstone upon which the publishing industry is founded. As such, it is taken very seriously, not only for the protection of authors and publishers, but also for the public, which enjoys the fruits of its production.

Publishing a book goes far beyond taking an author's material, sending it to be printed, and then shipping it off to a bookstore, a school or other customer. Market research, meticulous editing, substantial financial investment and vigorous marketing efforts are essential components of successful publishing. The incentive to do this would be lost if the exclusive rights granted under copyright to the author or publisher did not exist.

Authors' royalties are another reason for strict observance of copyright laws by publishers. In many instances, the author licenses his rights to the publishing house, making the publisher the guardian, so to speak. Each and every book that is sold, every subsidiary right that is marketed, and all funds derived from the sale or use of the author's creation earn royalties for the creator. This includes any permissions fees for excerpting or duplicating portions of a work. Every time copyrighted works are duplicated beyond the bounds of "fair use" without permission, the author, as well as the publisher, loses control over the use of the material as well as a portion of the reward and incentive that copyright is designed to provide.

Commercial requests to use copyrighted materials (such as from one publishing house to another) are the largest portion of a permissions department's workload. These authorizations are acknowledged on the copyright page of books, listed under credits for audiovisual works, or as footnotes in articles when only a small portion is used.

PURPOSE AND HISTORY OF COPYRIGHT

Copyright, designed to encourage the creation and dissemination of original works to the public, was originally established by statute in England in 1556 for an entirely

different purpose—to serve as a source of revenue for the Crown and as a device for controlling all publishing within Britain. Prior to that time, the only protection was under common law, which held "the author's right to his manuscript was recognized on principles of natural justice, being the product of intellectual labor and as much his own property as the substance on which he wrote it."[1]

The United States recognizes common law copyright, which accrues automatically upon creation of a work prior to publication. Once the work is published or widely distributed, however, common law protection ends; if it is to be protected, the material must be copyrighted under the federal copyright statutes. Article I, Section 8, of the U.S. Constitution gave Congress the power "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Copyright protection doesn't last forever (the current term is 28 years and is renewable for another 28, making 56 years the maximum length of protection). There is one exception to this rule. The Congress, since it began consideration of a copyright revision bill, has granted extensions to those copyrights which were due to expire in the last few years. Thus, any material which was copyrighted in September, 1906, or beyond is still probably under copyright. If the material is published and doesn't contain a copyright notice, then the material is in the public domain.

The copyright law under which we are now operating was enacted in 1909 and rapidly became outdated by advances in technology. The courts, in an attempt to come to grips with the divergence between the actual law and the situations created by new technologies, have established certain precedents termed "fair use" which, when viewed in conjunction with the law, set the guidelines for today's judicial copyright policies. It is a vast oversimplification to state that there are many conflicting interpretations of the current copyright situation and much disagreement over what should be included in the copyright revision legislation, which has been before the Congress for over a decade. This proposed revision of the copyright law attempts to:

- Change some technical details, such as the duration of the term of copyright protection.
- Outline to the fullest extent possible the allowable uses of copyrighted materials.
- Deal with mediums of expression not in existence in 1909, such as cable television, computers, etc.

The new law, however, is not expected to change the basic concept of copyright protection or the need for authors and publishers to maintain control over the fruits of their labors.

The ultimate beneficiary of this protection is the public because it is both a powerful stimulus to creation and the means of opening the channels of the dissemination of thought, information and debate.

For further information write:

Association of American Publishers
1707 L St., N.W., Suite 480
Washington, D.C. 20036

[1] Latman, Alan. *Howell's Copyright Law.* Washington, D.C.: Bureau of National Affairs, 1962.

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